

Form 765A

**Terms and Conditions
of Purchase for
Fixed-Price Subcontracts**

November 1995

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Table of Contents

Clause	Page	Clause	Page
Definitions	1		
Preamble	1		
"A" Clauses Apply to Subcontracts at All Dollar Levels		D" Clauses Also Apply to Subcontracts Over \$25,000	
A1 Antikickback Procedures	1	D1 Default	3
A2 Assignment of Claims	1	D2 Notice & Assistance Regarding Patent and Copyright Infringement	3
A3 Authorization and Consent	1	D3 Patent Indemnity	3
A4 Buy American Act	1	D4 Preference for U.S.—Flag Air Carriers	3
A5 Changes	1	D5 Reporting of Royalties	3
A6 Collect Shipments	1	D6 Utilization of Labor Surplus Area Concerns	3
A7 Convict Labor	1	D7 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns	3
A8 Covenant Against Contingent Fees	1	D8 Utilization of Women-Owned Small Business	3
A9 Declared Valuation of Shipments	1		
A10 Delivery of Excess Quantities	1	"E" Clauses Also Apply to Subcontracts Over \$100,000	
A11 Discounts for Prompt Payment	1	E1 Clean Air and Water	4
A12 Disputes	1	E2 Limitation on Payments to Influence Federal Transactions	4
A13 Document Approval Clause	2	E3 Termination for Convenience (For Subcontracts Exceeding \$100,000)	4
A14 Equal Opportunity	2		
A15 Federal, State, and Local Taxes	2	"F" Clauses Do Not Apply Unless Specifically Referred to in the Request For Solicitation and/or Subcontract	
A16 Hazardous Material I.D. & Material Safety Data	2	F1 Administration of Cost Accounting Standards	4
A17 Inspection	2	F2 Classification	4
A18 Limitations on Disclosure or Dissemination of Info	2	F3 Cost Accounting Standards	4
A19 Notice of Labor Dispute	2	F4 Disclosure and Consistency of Cost Accounting Practices	4
A20 Officials Not to Benefit	2	F5 Extended Warranty	4
A21 Payments	2	F6 Foreign Ownership, Control, or Influence Over Subcontractors	4
A22 Permits or Licenses	2	F7 Inspection of Goods — Fixed Price	4
A23 Pricing of Adjustments	2	F8 Inspection of Services — Fixed Price	4
A24 Printing	2	F9 Labor Surplus Area Subcontracting Program	4
A25 Property	2	F10 Notice of Small Disadvantaged Business Set-Aside	4
A26 Restrictions on Certain Foreign Purchases	2	F11 Notice of Total Small Business Set-Aside	4
A27 Restriction on Disclosure and Use of Data	2	F12 Nuclear Hazards Indemnity Agreement	4
A28 Restrictions on Lower-tier Subcontractor Sales to the Government	2	F13 Organizational Conflicts of Interest	4
A29 Security	2	F14 Price Reduction for Defective Cost or Pricing Data	4
A30 State of NM Gross Receipts & Compensating Tax	2	F15 Price Reduction for Defective Cost or Pricing Data — Modifications	4
A31 Stop-Work Order	2	F16 Priorities and Allocations	4
A32 Termination for Convenience	2	F17 Rights in Data — General	4
A33 Title	2	F18 Security Access Authorization and Operations Security	4
A34 Used/Reconditioned Material, Residual Inventory, and Former Government. Surplus Property	2	F19 Sensitive Foreign Nations Control	4
A35 Warranty	2	F20 Service Contract Act of 1965 (For Subcontracts \$2500 or Less)	4
A36 Whistleblower Protection	2	F21 Service Contract Act of 1965 (For Subcontracts Exceeding \$2500)	4
A37 Work on University or Government Premises	2	F22 Small Business and Small Disadvantaged Business Subcontracting Plan	4
"B" Clauses Also Apply to Subcontracts Over \$2500		F23 Subcontractor Cost or Pricing Data	4
B1 Affirmative Action for Handicapped Workers	3	F24 Subcontractor Cost or Pricing Data — Modifications	4
B2 Contract Work Hours & Safety Standards Act — Overtime Compensation	3	F25 Workplace Substance Abuse Programs at DOE Sites	4
B3 Fair Labor Standards Act & Service Contract Act	3		
B4 Fair Labor Standards Act & Service Contract Act — Price Adjustment	3		
"C" Clauses Also Apply to Subcontracts Over \$10,000			
C1 Employment Reports on Special Disabled Veterans & Veterans of the Vietnam Era	3		
C2 Examination of Records by Comptroller General	3		
C3 Affirmative Action for Special Disabled and Vietnam Era Veterans	3		
C4 Walsh-Healey Public Contracts Act	3		

Los Alamos National Laboratory

Terms and Conditions by Reference for Fixed-Price Subcontracts

Definitions. For purposes of this subcontract in the following referenced clauses, the following terms shall mean:

- (a) *Government Contracting Officer* — a representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.
- (b) *DEAR* — The Department of Energy Acquisition Regulation.
- (c) *DOE* — The United States Department of Energy.
- (d) *FAR* — The Federal Acquisition Regulation.
- (e) *Goods* — All tangible property, except land or interest in land, and including tooling, equipment, materials supplies, etc., used in connection with a subcontract.
- (f) *Government* — The government of the United States of America.
- (g) *Subcontract* — A subcontract is a legally binding agreement issued under the Prime Contract and between the Laboratory and a third party that contains the essential terms and conditions under which goods or services will be furnished to the Laboratory.
- (h) *Subcontractor* — The party entering into the subcontract with The Regents of the University of California.
- (i) *Lower-tier subcontractor* — An individual or legal entity that has entered into an agreement with a Subcontractor for the delivery of goods or services necessary for the Subcontractor's performance of the subcontract.
- (j) *University* — The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 with the Department of Energy.
- (k) *University's procurement specialist* — The representative of the University of California authorized to address contractual issues, and execute and/or administer subcontracts on behalf of Los Alamos National Laboratory.

Preamble.

- (a) Pursuant to the terms of Contract W-7405-Eng-36, the University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions referenced herein are similar to terms and conditions used by federal agencies. However, the University is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.
- (b) The Subcontractor shall furnish the goods and/or services covered by the subcontract subject to all the terms and conditions referenced herein. The Subcontractor, in accepting the subcontract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance of shipment of all or any portion of goods or the performance of all or any portion of the services covered by the subcontract shall constitute unqualified acceptance of all University terms and conditions. The terms of any quotation referred to in the subcontract are included and made a part of the subcontract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the subcontract.
- (c) FAR and/or DEAR clauses are included by reference in this form; non-FAR and/or DEAR clauses are given in full text. The version of the FAR and/or DEAR clauses in effect as of the effective date of the subcontract shall apply with the same force and effects as if they were given in full text. Upon request, the procurement specialist will make the full text of the clauses available.

The following "A" Clauses Apply to Subcontracts at All Dollar Levels. FAR and DEAR clauses are incorporated into this Section "A" by reference with the same force and effects as if they were included in full text:

Clause A1 — Antikickback Procedures (FAR 52.203-7)

Clause A2 — Assignment of Claims (FAR 52.232-23)

Clause A3 — Authorization and Consent (FAR 52.227-1)

Clause A4 — Buy American Act - Supplies (FAR 52.225-3)

Clause A5 — Changes (FAR 52.243-1)

Clause A6 — Collect Shipments (Adapted from Commercial Bill of Lading Notations (FAR 52.247-1))

Goods purchased f.o.b. shipping point must be forwarded freight collect.
(Note: Government freight rates do not apply to prepaid shipments. Excess costs will be deducted from the amount invoiced for the goods if the goods

are not shipped collect in accordance with the following instructions). The following notation must appear on the bills of lading or express receipt:

"This shipment is for the account of the U.S. Government, which will assume the freight charges. It is subject to the terms and conditions set forth in the standard form of the U.S. Government's bill of lading and to any available special rates or charges."

Clause A7 — Convict Labor (FAR 52.222-3)

Clause A8 — Covenant Against Contingent Fees (FAR 52.203-5/As Modified by DEAR 970.5203-1)

Clause A9 — Declared Valuation of Shipments (BUS-43, Exhibit C, Article 9)

Except as otherwise provided on the face of the subcontract, all shipments by the Subcontractor under the subcontract for the University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification, and the bill of lading shall so note it.

Clause A10 — Delivery of Excess Quantities (FAR 52.212-10)

Clause A11 — Discounts for Prompt Payment (FAR 52.232-8 and DOE Order 2200.6)

Clause A12 — Disputes

- (a) Except as otherwise provided for in the subcontract, all disputes arising under or relating to the subcontract shall be resolved in accordance with this clause.
- (b) **Definition.** "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this subcontract.
- (c) Unless otherwise provided for in the subcontract, a claim by the Subcontractor must be filed within 30 calendar days after the Subcontractor knows, or should have known, of the facts giving rise thereto.
- (d) Any claim by the Subcontractor shall first be presented to the University's procurement specialist, who shall attempt to resolve this matter. If the claim is not resolved by the University's procurement specialist in a manner satisfactory to the Subcontractor, and the Subcontractor desires to pursue further action, the claim must be presented in writing to the Laboratory's Procurement Manager for a written decision.
- (e) The Laboratory's Procurement Manager shall investigate the issues involved in the claim and promptly issue a decision in writing. A copy of that decision shall be mailed to the Subcontractor and shall state the reason(s) for the decision. The decision of the Laboratory's Procurement Manager shall be the final administrative decision of the Laboratory.
- (f) The decision of the Laboratory's Procurement Manager shall be reviewed exclusively through the process stated in subsequent paragraphs of this clause.
- (g) A claim by the University against the Subcontractor that is signed by the Laboratory's Procurement Manager, or a decision by the Laboratory's Procurement Manager regarding a claim by the Subcontractor, may be submitted to the DOE Contracting Officer for review and a written decision. Any such submittal by the Subcontractor shall be made within 30 calendar days after the Subcontractor's receipt of the decision of the Laboratory Procurement Manager.
- (h) The decision of the DOE Contracting Officer shall be issued in a reasonable amount of time and shall be final unless one of the parties appeals the decision, within 30 days from the receipt of the decision, to the DOE Board of Contract Appeals. The decision of the Board shall be final and conclusive.
- (i) For Subcontractor claims of \$50,000 or less, the Laboratory must, if requested in writing by the Subcontractor, render a decision within 60 days of the request. For Subcontractor claims exceeding \$50,000, the Laboratory must, within 60 days, decide the claim or notify the Subcontractor of the date by which the decision will be made.
- (j) Pending final resolution of any claim, request for relief, appeal, or action arising under or relating to the subcontract, the Subcontractor shall proceed diligently with performance of the subcontract and in accordance with any direction of the University's procurement specialist.

Clause A13 — Document Approval Clause

- (a) If the subcontract requires the Subcontractor to furnish shop drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and/or test data, such documents must have University approval prior to performance of the subcontract. The Subcontractor is advised that approval by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this subcontract, except as outlined in paragraph (b) below. Any work done prior to such approval shall be at the Subcontractor's risk.
- (b) If the above documents show variations from subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission. If the University approves any such variation(s), an appropriate and negotiated modification will be issued accordingly.

Clause A14 — Equal Opportunity (FAR 52.222-26)

Clause A15 — Federal, State, and Local Taxes (FAR 52.229-3)

Clause A16 — Hazardous Material Identification and Material Safety Data (FAR 52.223-3)

Clause A17 — Inspection

The goods or services furnished shall be exactly as specified in the subcontract, free from all defects in Subcontractor's design, workmanship, and materials and, except as otherwise provided in the subcontract, shall be subject to inspection and test by the University at all times and places. The University or the Government has the right to inspect or test at the Subcontractor's or lower-tier subcontractor's facility and has the right to require the Subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. If, before final acceptance, any goods or services are found to be defective or not as specified, the University may reject them, require the subcontractor to correct them without charge, or require delivery of such goods or services at a reduction in price that is equitable under the circumstances. If the Subcontractor is unable or refuses to correct such items within a time deemed reasonable by the University's procurement specialist, the University's procurement specialist may terminate the subcontract in whole or in part. The Subcontractor shall bear all risks for rejected goods and services and, in addition to any costs for which the Subcontractor may become liable to the University under other provisions of the subcontract, shall reimburse the University for all transportation costs, other related costs, incurred, or payments to the Subcontractor according to the terms of the subcontract for unaccepted goods and services. Notwithstanding final acceptance and payment, the Subcontractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to and do not limit the University's rights provided in the clause.

Clause A18 — Limitations on Disclosure or Dissemination of Information

- (a) The Subcontractor agrees that any information to which the Subcontractor or its personnel obtains access in the course of this subcontract shall be safeguarded from disclosure or dissemination in accordance with the terms of any markings or other guidance accompanying such information. Such information may include, but is not limited to: proprietary information or trade secrets of third parties; unpublished software or technical data generated at the University; business, administrative, or financial information of the University or third parties; and other University information identified as privileged, proprietary, or otherwise subject to limitations with regard to dissemination.
- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b) in any lower-tier subcontract.

Clause A19 — Notice of Labor Dispute (FAR 52.222-1)

Clause A20 — Officials Not to Benefit (FAR 52.203-1)

Clause A21 — Payments (FAR 52.232-1)

Clause A22 — Permits or Licenses (DEAR 970.5204-29)

Clause A23 — Pricing of Adjustments (Part 31 of FAR)

When costs are a factor in any determination of a price adjustment pursuant to the Changes clause or any other provision of the subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR.

Clause A24 — Printing (DEAR 970.5204-19)

Clause A25 — Property (FAR 52.245-2 including Alternates I or II, as applicable)

Clause A26 — Restrictions on Certain Foreign Purchases (May 1992) (DEAR 952.204-2)

Clause A27 — Restriction on Disclosure and Use of Data (Modified FAR 52.215-12)

The University or the Government may be requested to disclose data contained in your offer. To avoid data in your offer from being disclosed to the public and/or otherwise being used by the University or the Government, the Subcontractor shall include the following legend in the title page of the offer and identify the data subject to restriction throughout the offer:

"This offer includes data that shall not be disclosed outside the University or the Government and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this offer. If, however, the subcontract is awarded to this Subcontractor as a result of or in connection with the submission of this data, the University and the Government shall have the right to duplicate, use or disclose the data to the extent provided for in the resulting subcontract. This restriction does not limit the University's or the Government's rights to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheet(s) *{insert the numbers or other identifier}*."

Clause A28 — Restrictions on Lower-tier Subcontractor Sales to the Government (FAR 52.203-6)

Clause A29 — Security (DEAR 952.204-2)

Clause A30 — State of New Mexico Gross Receipts and Compensating Tax (FAR 52.229-10)

Clause A31 — Stop-Work Order (FAR 52.212-13)

Clause A32 — Termination for Convenience (FAR 52.249-1)

Clause A33 — Title

- (a) Title to the goods and services purchased hereunder shall pass directly from the Subcontractor to the Government (through the University) at the f.o.b. point shown, subject to the right of University to reject upon inspection.
- (b) **Identification.** To the extent directed by the procurement specialist, the Subcontractor shall identify University and DOE property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the University, as shall indicate its ownership by the University or DOE.

Clause A34 — Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (FAR 52.210-7)

Clause A35 — Warranty

The Subcontractor agrees that goods or services furnished under the subcontract shall be covered by the most favorable commercial warranties the Subcontractor gives to any customer for the same or substantially similar goods or services and the Subcontractor shall furnish copies of same to the University. The rights and remedies provided by such warranties are in addition to and do not limit any right afforded to the University by any other clause of the subcontract. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the goods or services by the University.

Clause A36 — Whistleblower Protection (DEAR 970.5204-59)

Clause A37 — Work on University or Government Premises

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor or its lower-tier subcontractors at University or Government-owned sites or facilities, the following provisions shall apply:

- (a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University's procurement specialist, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each. The Subcontractor further agrees that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.
- (b) **Indemnify and Hold Harmless.**
- (1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, cause of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborer's, materialmen's, and mechanic's liens upon the real property upon which the work is located or any other property of the University or the Government; and
 - (2) Promptly notify the University's procurement specialist, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action or suits, or liens. The Subcontractor, at the request of the University's procurement specialist, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims

as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) **Cleaning up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its lower-tier subcontractors tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and its lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.
- (d) **Employees.** The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall immediately remove such person from the work under the subcontract, and that person shall not again, without written permission of the University's procurement specialist, be assigned to work under the subcontract;
- (e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University's procurement specialist with one copy of the certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.
- (f) **Environment, Safety, Health, and Fire Protection.**
- (1) The Subcontractor shall take all reasonable precautions in the performance of the work under the subcontract to protect the health and safety of employees and of members of the public and shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University's procurement specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails to comply with said regulations or requirements of the University and DOE, the University's procurement specialist may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start work order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.
 - (2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

The following "B" Clauses Also Apply to Subcontracts Exceeding \$2500, and are incorporated into this Section "B" by reference with the same force and effects as if they were included in full text:

- Clause B1 — Affirmative Action for Handicapped Workers** (FAR 52.222-36)
Clause B2 — Contract Work Hours and Safety Standards Act - Overtime Compensation (FAR 52.222-4)
Clause B3 — Fair Labor Standards Act and Service Contract Act (FAR 52.222-43). *Note: This clause applies only to subcontracts for fixed-price services exceeding \$2,500 that are written for multiple years or contain options.*
Clause B4 — Fair Labor Standards Act and Service Contract Act - Price Adjustment (FAR 52.222-44). *Note: This clause applies only to subcontracts for fixed-price services exceeding \$2,500 that are subject to the Service Contract Act, are not for multiple years, and do not have options to renew.*

The following "C" Clauses Also Apply to Subcontracts Over \$10,000, and are incorporated into this Section "C" by reference with the same force and effects as if they were included in full text:

- Clause C1 — Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era** (FAR 52.222-37)
Clause C2 — Examination of Records by Comptroller General (FAR 52.215-1)
Clause C3 — Affirmative Action for Special Disabled and Vietnam Era Veterans (52.222-35)
Clause C4 — Walsh-Healey Public Contracts Act (FAR 52.222-20)

The following "D" Clauses Also Apply to Subcontracts Over \$25,000. FAR and DEAR clauses are incorporated into this Section "D" by reference with the same force and effects as if they were included in full text:

- Clause D1 — Default** (FAR 52.249-8)
Clause D2 — Notice and Assistance Regarding Patent and Copyright Infringement (DEAR 970.2701)
Clause D3 — Patent Indemnity (FAR 52.227-3)
Clause D4 — Preference for U.S.-Flag Air Carriers (FAR 52.247-63)
Clause D5 — Reporting of Royalties

- (a) If any royalty payments are reflected in the subcontract price to the University, the Subcontractor agrees to report in writing to the University during performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of the University of any individual payments or royalties shall not stop the University or DOE at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.
- (b) The Subcontractor agrees to include the provisions of this clause, appropriately modified as to parties, in all lower-tier subcontracts exceeding \$25,000 unless otherwise approved by the University.

- Clause D6 — Utilization of Labor Surplus Area Concerns** (FAR 52.220-3)
Clause D7 — Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FAR 52.219-8)
Clause D8 — Utilization of Women-Owned Small Business (FAR 52.219-13)
The following "E" Clauses Also Apply to Subcontracts Over \$100,000, and are incorporated into this Section "E" by reference with the same force and effects as if they were included in full text:

- Clause E1 — Clean Air and Water** (FAR 52.223-2)
Clause E2 — Limitation on Payments to Influence Certain Federal Transactions (FAR 52.203-12)
Clause E3 — Termination for Convenience (For Subcontracts Exceeding \$100,000) (FAR 52.249-2)

The following "F" Clauses Apply Only When Cited in the Request for Quotation and/or Subcontract. When cited, the FAR and DEAR

clauses incorporated by reference hereafter, apply with the same force and effects as if they were included in full text:

Clause F1 — Administration of Cost Accounting Standards (FAR 52.230-5)

Clause F2 — Classification (DEAR 952.204-70)

Clause F3 — Cost Accounting Standards (FAR 52.230-2)

Clause F4 — Disclosure and Consistency of Cost Accounting Practices (FAR

52.230-3)

Clause F5 — Extended Warranty

Notwithstanding any other provisions of the subcontract, the Subcontractor warrants that the goods or services furnished shall be of the most suitable grade and exactly as specified in the subcontract. Such warranty shall include the following: performance, workmanship, labor, materials, and the Subcontractor's design or engineering contributions. If a defect is discovered in any goods or services covered in the subcontract, the Subcontractor shall correct at its expense such defects as are reported within one year of final acceptance or such longer period as the Subcontractor may offer in its most favorable applicable warranty. Upon expiration of the applicable warranty period, all such liability shall terminate except for fraud or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of the subcontract. This warranty is in addition to the Warranty clause in Section A.

Clause F6 — Foreign Ownership, Control, or Influence Over Subcontractors (DEAR 952.204-74)

Clause F7 — Inspection of Goods — Fixed Price (FAR 52.246-2)

Clause F8 — Inspection of Services — Fixed Price (FAR 56.246-4)

Clause F9 — Labor Surplus Area Subcontracting Program (FAR 52.220-4)

Clause F10 — Notice of Small Disadvantaged Business Set-Aside

(a) **Definitions.** "Small business concern," as used in this clause, means a small business concern

- (1) That is at least 51 percent owned by one or more socially and economically disadvantaged persons, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged persons; and
- (2) Whose management and daily operations are controlled by one or more such persons.

The Subcontractor shall presume that socially and economically disadvantaged persons include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Americans and other minorities, or any other person found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Subcontractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

"Small disadvantaged business concern," as used in this clause, means a small business concern.

(b) **General.**

- (1) Proposals are solicited from small disadvantaged business concerns. Proposals received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

Clause F11 — Notice of Total Small Business Set-Aside (FAR 52.219-6)

Clause F12 — Nuclear Hazards Indemnity Agreement (DEAR 952.250-70)

Clause F13 — Organizational Conflicts of Interest (DEAR 952.209-72)

Clause F14 — Price Reduction for Defective Cost or Pricing Data (FAR 52.215-22)

Clause F15 — Price Reduction For Defective Cost or Pricing Data - Modifications (FAR 52.215-23)

Clause F16 — Priorities and Allocations (DEAR 970.5204-33)

Clause F17 — Rights in Data - General (FAR 52.227-14)

Clause F18 — Security Access Authorization and Operations Security

(a) **Access Authorization.** Subcontractor personnel engaged in the performance of work under a subcontract on University property, government premises, or offsite facilities are required to possess a DOE access authorization ("L" or "Q" clearance), and must comply with the following requirements. The Subcontractor shall be responsible for

- (1) Completing and submitting all necessary application forms for

authorized access in advance of the need. Application forms may be obtained from the University's Operational Security and Safeguards (FSS) Division. All personnel granted an access authorization will be briefed by the University, on access to classified matter, security areas, and security requirements;

- (2) Safeguarding information that may come into the Subcontractor's possession or within the purview of its work. Unless otherwise authorized by the University's procurement specialist in writing, within 30 days of completion or termination of the subcontract, the Subcontractor shall (a) return to the University all classified matter and badges in the possession of the Subcontractor or person under the Subcontractor's control, and (b) furnish to the University a Certificate of Nonpossession (for Offsite Facilities) as well as the Security Termination Statements (Form 5631.29) for all affected personnel; and
- (3) Ensuring all cleared employees comply with DOE's security requirements including the provisions of DOE Order 5631.1B, "Security Education and Awareness Program."

(b) **Operations Security Program.** The Subcontractor agrees to implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the provisions of the Laboratory's OPSEC Guidance for LANL Contractors Manual when awarded subcontracts involving access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests.

(c) Whenever the work under this order requires the issuance of "Q-cleared," "L-cleared," or "Escort Required" badges, the University may withhold final payment to the Subcontractor until all such badges are returned to the University's procurement specialist as required in paragraph (a)(2) above.

Clause F19 — Sensitive Foreign Nations Control (DEAR 952.204-70)

Clause F20 — Service Contract Act of 1965 (For Subcontracts \$2500 or Less) (FAR 52.222-40)

Clause F21 — Service Contract Act of 1965 (For Subcontracts Exceeding

\$2500) (FAR 52.222-41)

Clause F22 — Small Business and Small Disadvantaged Business Subcontracting Plan (FAR 52.219-9)

Clause F23 — Subcontractor Cost or Pricing Data (FAR 52.215-24)

Clause F24 — Subcontractor Cost or Pricing Data - Modifications (FAR 52.215-25)

Clause F25 — Workplace Substance Abuse Programs at DOE Sites (DEAR 970.5204-58)